IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4717 of 2002
Date of Decision: March 27, 2015

Employees' State Insurance Corporation and others .. Appellants

vs.

M/s Chinar International and another .. Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vikas Suri, Senior Standing counsel for the appellants

Mr. Harkesh Manuja, Advocate for the respondents.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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Kuldip Singh J.

The present appeal has been filed against the order dated 12.06.2002 passed by Civil Judge (Sr. Divn.), Panipat, exercising the powers of Employees' State Insurance Court, Panipat (in short 'the ESI Court'), whereby in an application for declaration under Section 75(1) of the Employees' State Insurance Act, 1948 (in short 'the ESI Act') was allowed and it was declared that the unit of the respondents-petitioners before the lower court is not covered under Section 75(1) of the ESI Act and the order passed under Section 45(1) of the ESI Act was illegal and cannot bind the rights of the respondents-petitioners.

The short controversy is that the Employees State Insurance Corporation (in short 'the ESIC') after conducting the

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survey raised a demand of ₹28,710/- as ESIC contribution for the period from 21.03.1997 to March, 1998, claiming that more than ten employees were working in the establishment of the respondents-petitioners. Before the lower court, a specific objection was raised by ESIC (present appellants) that the challenge could not be made without depositing 50% of the demand. Specific issue No.1 was framed in this regard.

The lower court took up issue Nos.1 and 2 together and it was observed as under:

> "---*So far as non-deposit of 50% of the demanded amount is concerned, there is no statement of Mr. R.C. Sharma, RW1 that unless depositing 50% amount, the petitioner is not at liberty to challenge the impugned orders passed u/s 45(1) of the Act. Ld. counsel for the respondents could not show me any provision which debars the petitioners from filing the present petition without depositing of 50% of the amount demanded by the respondents."*
>
> Consequently, the application was allowed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

> Section 75(2B) of the Act provides as under:
>
> " *2(B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation :*

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Provided that the Court may, for reasons to be recorded in writing waive or reduce the amount to be deposited under this sub section."

Therefore, it is evident that the challenge to the demand cannot be made without deposit of 50% amount claimed by the ESIC. However, the Court for the reasons to be recorded in writing could waive or reduce the amount to be deposited under the sub section. However, despite the objections raised by the ESIC, neither any amount was deposited nor any waiver or reduction was sought. Therefore, challenge to the order passed under Section 45(1) of the Act, could not be made under Section 75 of the Act.

Learned counsel for the respondents-petitioners states that as per his information, a draft of ₹16,000/- was deposited on 13.09.1999.

However, it comes out that even if the said contention is correct, the application was filed in April 1999 and such application could not be filed without depositing of 50% of the amount demanded and specifically an issue (Issue No.2).

Consequently, the appeal is allowed and the application filed by the respondents-petitioners before the lower court is dismissed after setting aside the impugned order.

(KULDIP SINGH)
JUDGE

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